

AGREEMENT ON COORDINATION OF TAX ADMINISTRATION

Section 1. Introduction

1.1 The Agency and IRS recognize the mutual benefits to be derived through coordination of their tax administration programs to secure returns, determine tax liability, and effect collection of taxes; and the parties do hereby agree to continue, to the extent permitted by law, the cooperative programs already established and to enter into additional arrangements designed to improve the administration and enforcement of tax laws of their respective jurisdictions. Officials of the Agency, acting under authority vested in or delegated to them to administer State tax laws, and the appropriate officials of IRS will consult from time to time regarding their respective enforcement efforts and will establish mutually agreeable programs for the exchange of information and assistance.

1.2 This agreement provides the general basis for achieving coordination of Federal and State tax administration. Specific arrangements will be initiated in a manner and at such time as are mutually agreeable to Agency and IRS officials. They shall explore and adopt mutually acceptable techniques and modes of exchange which will be most beneficial to improved tax administration with the least possible interruption of their respective operating routines and with strict adherence to laws, regulations, and rules for protecting the confidentiality of returns and return information.



Section 2. Definitions

For purposes of this agreement, the following definitions shall apply:

2.1 Agency. The term "Agency" means the Department of  
(State or State agency,  
Revenue and Taxation of Guam  
body, or commission)

2.2 IRS. The term "IRS" means the Internal Revenue Service,  
U. S. Department of the Treasury.

2.3 State. The term "State" means the Territory of Guam  
(and of State,  
Commonwealth, etc.)

2.4 Agency Representative. The term "Agency Representative" means an Agency officer or employee designated in writing by the head of the Agency as an individual who is to inspect or receive Federal returns or Federal return information on behalf of the Agency as provided by section 6103(d) of the Code, but only so long as the duties and employment of such officer or employee require access to Federal returns and Federal return information for purposes of State tax administration.

2.5 Federal Return. The term "Federal return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the Code which is filed with the IRS by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

2.6 Federal Return Information. The term "Federal return information" means —

- (a) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's Federal return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by IRS with respect to a Federal return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense; and
- (b) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b) of the Code) which is not open to public inspection under section 6110 of the Code.

2.7 State Return. The term "State return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the

internal revenue laws, or related statutes, of the State, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

2.8 State Return Information. The term "State return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, whether the taxpayer's State return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Agency with respect to a State return or with respect to the determination of the existence, or possible existence, or liability (or the amount thereof) of any person under the internal revenue laws, or related statutes, of the State for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

2.9 Inspection. The term "inspection" means any examination of a return or return information.

2.10 Disclosure. The term "disclosure" means the making known to any person in any manner whatever a return or return information.

2.11 State Tax Administration. The term "State tax administration"

(a) means —

(i) the administration, management, conduct, direction, and supervision of the execution and application of the revenue laws, or related statutes of the State, and

(ii) the development and formulation of State tax policy relating to existing or proposed internal revenue laws, or related statutes, of the State, and

(b) includes assessment, collection, enforcement, litigation, and statistical gathering functions under such laws or statutes.

2.12 Code. The term "Code" means the Internal Revenue Code of 1954, as amended.

Section 3. Disclosure of Federal Returns and Federal Return Information

3.1 Under the laws of the State, the Agency is charged with the responsibility for the administration of taxes imposed on the net  
(specify)  
income of individuals and corporations, gross business receipts of  
individuals and corporations, property imported into Guam for  
personal or business use, transient occupancy in hotels and lodging  
houses, admissions to public spectator events, sale of alcoholic  
beverages and tobacco products and liquid fuels, real property, and  
various miscellaneous taxes on personal and business transactions.

Federal returns and Federal return information (whether originals, paper copy, photocopy, microfilm, magnetic tape, or any other form) received

pursuant to this agreement will be used for the purpose of, and only to the extent necessary in, State tax administration.

3.2 This agreement constitutes the requisite authorization pursuant to section 6103(d) of the Code for IRS to disclose to, and permit inspection by, an Agency Representative of Federal returns and Federal return information relating to taxes imposed by chapter(s) 1, 2, 6, 11, 12, 21, 23, 24, 44, 51 and 52 and subchapter D of chapter 36 of the Code.

3.3 Upon the occurrence of any change in employment, duties, or other relevant matters affecting an Agency Representative's right of access to Federal returns and Federal return information or status as Agency Representative, the head of the Agency shall promptly advise IRS in writing that such individual is no longer an Agency Representative.

3.4 An Agency Representative to whom a Federal return of a taxpayer or Federal return information relating to a taxpayer has been disclosed as provided by section 6103(d) of the Code and paragraph 3.2 of this agreement may thereafter disclose such return or return information:

- (a) to another employee of the Agency for the purpose of, and only to the extent necessary in, the administration of the State tax laws for which the Agency is responsible;
- (b) to another officer or employee of the State to whom such disclosure is necessary in connection with processing, storage, and transmission of such returns and return

information and solely for purposes of State tax administration and in a manner consistent with the requirements of section 6.4 of this agreement;

- (c) to another person for the purpose of, but only to the extent necessary in, the programming, maintenance, repair, testing, and procurement of equipment used in processing or transmission of such returns and return information; or
- (d) to a legal representative of the Agency, personally and directly engaged in, and solely for use in, preparation for a civil or criminal proceeding (or investigation which may result in a proceeding) before a State administrative body, grand jury, or court in a matter involving State tax administration, but only if --
  - (i) such taxpayer is or may be a party to such proceeding;
  - (ii) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or
  - (iii) such return or return information relates, or may relate, to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

3.5 A Federal return of a taxpayer or Federal return information relating to a taxpayer may be disclosed in a State judicial or



administrative proceeding pertaining to State tax administration, but only if --

- (a) the taxpayer is a party to such proceeding and the return or return information relates to the resolution of a tax issue in such proceeding;
- (b) the treatment of an item reflected on such return is directly related to the resolution of a tax issue in the proceeding; or
- (c) such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of a tax issue in the proceeding.

3.6 Notwithstanding any other provision of this section, IRS will not disclose a Federal return or Federal return information under this section to any person if such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation. The Agency agrees that neither it nor its legal representatives will make any further use or disclosure of a Federal return or Federal return information disclosed to an Agency Representative by IRS if IRS notifies the head of the Agency in writing that such further use or disclosure would identify a confidential informant or



seriously impair a Federal civil or criminal tax investigation. The Agency further agrees that prior to disclosure of any Federal return or Federal return information in a State judicial or administrative proceeding as provided by paragraph 3.5 of this agreement, the head or legal representative of the Agency will notify IRS in writing of the intention to make such disclosure. No officer, employee, or legal representative of the Agency shall thereafter so disclose a Federal return or Federal return information in such State judicial or administrative proceeding if, within 30 days following receipt of such written notice of intention to disclose, IRS notifies the head or legal representative of the Agency that such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation.

#### Section 4. Disclosure of State Returns and Return Information

4.1 This agreement constitutes the requisite authorization for the Agency to disclose to, and permit inspection by, officers and employees of IRS of State returns and State return information for the purpose of, and only to the extent necessary in, the administration of the internal revenue laws, or related statutes, of the United States. Any such State returns and State return information so disclosed to, or inspected by, officers or employees of IRS become, in the hands of IRS, "taxpayer return information" as defined by section 6103(b)(3) of the Code and may thereafter be disclosed by IRS only to such persons, for such purposes, and under such conditions as may be prescribed by the Code.

4.2 The District Director(s) at the Office of International Operations

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shall designate in writing to the Agency those officers and employees of IRS who are to inspect or receive State returns and State return information on behalf of IRS.

Section 5. Cooperative Audits and Other Cooperative Activities

5.1 Subject to the restrictions and other provisions of this agreement and within the framework of available enforcement resources, the Agency and IRS will develop cooperative return selection and examination programs with the objective of avoiding unnecessary duplication of Federal and State audit efforts, thereby increasing overall Federal and State audit coverage. Each will furnish to the other, in accordance with mutually agreed schedules and routines, information on audit adjustments made by its offices and such other information as will assist in determining final tax liability.

5.2 Under such arrangements as may be feasible, the Agency and IRS will furnish to each other information which will assist in locating persons whose tax accounts are delinquent or who may be entitled to tax refunds. Additionally, the Agency and IRS will exchange lists of taxpayers and other information relevant to the identification of persons who have failed to file tax returns.

5.3 Information other than Federal or State return information which Agency and Federal tax officials may deem to be relevant or useful to the administration of State and Federal tax laws may be exchanged, if feasible, under arrangements made by the Agency and IRS. Such information may be furnished in the form of lists, magnetic tapes, transcripts, or abstracts.

5.4 In addition to the exchange of tax and other information, the Agency and IRS will, to the extent feasible, extend to each other assistance in other tax administration matters. This may include such activities as taxpayer assistance, stocking tax forms for the public, training of personnel, special statistical studies and compilations of data, development and improvement of tax administration systems and procedures, and such other activities as may improve tax administration.

Section 6. Safeguards and Other Requirements

6.1 As an express condition for the inspection and disclosure of Federal returns and Federal return information pursuant to this agreement, the Agency agrees to comply with the following safeguards and requirements prescribed by section 6103(p) of the Code and any implementation of such safeguards and requirements as may be provided by regulations and published procedures:

- (a) establish and maintain, to the satisfaction of IRS, a permanent system of standardized records with respect to any request made by the Agency for such inspection or disclosure, the reason for such request, and the date of such request, and, in addition, any disclosure made by or to it under the authority of this agreement;
- (b) establish and maintain, to the satisfaction of IRS, a secure area or place in which such returns or return information shall be stored;
- (c) restrict, to the satisfaction of IRS, access to such returns and return information to persons whose duties

or responsibilities require access and to whom disclosure may be made under the provisions of this agreement;

- (d) provide such other safeguards as IRS may determine to be necessary or appropriate to protect the confidentiality of such returns and return information;
- (e) furnish a report by the last day of each calendar quarter to IRS describing the procedures established and utilized by the Agency for ensuring the confidentiality of such returns and return information;
- (f) upon completion of the use of such returns or return information (1) either return such returns or return information (along with any copies made thereof) to IRS or (2) make such returns, return information, and copies undisclosable in any manner and furnish a written report to IRS describing how this was effected; and
- (g) permit IRS and, to effectuate the provisions of section 6103(p)(6)(A), the General Accounting Office to audit the extent to which the Agency is complying with the requirements of this paragraph.

The conditions of subparagraphs (a), (b), (c), and (d) above shall cease to apply with respect to any Federal return or Federal return information if, and to the extent that, such return or return information is disclosed in the course of any State judicial or administrative proceeding and made a part of the public record thereof.

6.2 The Agency further agrees to inform in writing all Agency Representatives and other persons to or by whom disclosure or inspection

of Federal returns or Federal return information is authorized by section 3 of this agreement of the criminal penalties and civil liability provided by sections 7213 and 7217 of the Code for a disclosure of such returns and return information which is unauthorized by the Code.

6.3 In recognition of their responsibilities under this agreement, each party to the agreement shall, when requested by the other party, review with the other party its safeguard measures for protecting the confidentiality of returns and return information. The District Director(s) or his delegate at the Office of International Operations and the head of the Agency or his delegate will represent their respective organizations for the purpose of such reviews.

6.4 Processing of Federal returns or Federal return information received by the Agency from IRS in the form of microfilms, photoimpressions, magnetic tapes, or other format (including reformatting or reproduction, or conversion to magnetic tapes, punch cards, or hard copy printout) and transmission and storage of such Federal returns or Federal return information by or on behalf of the Agency shall be performed only by use of State owned or operated computer or other facilities. In those cases where such facilities used by the Agency are shared with other State agencies, the Agency will assure that only those persons described in section 3 of this agreement will have access to Federal returns or Federal return information, that, in the case of processing of Federal returns and Federal return information, such processing is conducted under the immediate supervision and control of Agency Representatives or other authorized employees of the Agency, and that the processing, transmission, or

storage of Federal returns or Federal return information by use of such shared facilities is performed in a manner which meets the requirements of section 6.1 of this agreement.

6.5 Because some taxpayers may be unaware that Agency tax officials are authorized under Federal law to obtain Federal returns or Federal return information for State tax administration purposes, the Agency shall publicize, in a manner satisfactory to IRS, that such returns or return information was obtained pursuant to specific authority granted by the Code.

#### Section 7. Limitations

7.1 Subject to manpower and time considerations, IRS may in its discretion prepare and furnish to the Agency, upon written request by the head of the Agency, special tabulations or compilations of Federal returns or Federal return information to which the Agency is granted access pursuant to section 6103(d) of the Code and the terms of this agreement.

7.2 Pursuant to the provisions of section 6103(p)(2) of the Code, IRS may charge the Agency a reasonable fee for furnishing Federal returns and Federal return information under the terms of this agreement.

7.3 Under no circumstances shall the Agency permit any Federal return or Federal return information to be inspected by, or disclosed to, an individual who is the chief executive officer of the State or any person other than one described in section 3 of this agreement.

7.4 Notwithstanding any other provision of this agreement, IRS shall not disclose or make known in any manner whatever to any person described in section 3 of this agreement --



- (a) any original, copy, or abstract of any return, payment, or registration made pursuant to chapter 35 of the Code (relating to taxes on wagering);
- (b) any record required for making any such return, payment, or registration made or required pursuant to chapter 35, which IRS is permitted by the taxpayer to examine or which is produced pursuant to section 7602 of the Code (relating to the examination of books and witnesses); or
- (c) any information obtained by the exploitation of any such return, payment, registration, or record made or required pursuant to chapter 35.

7.5 Notwithstanding any other provision of this agreement, IRS shall not disclose or make known in any manner to any person described in section 3 of this agreement information which was obtained pursuant to a tax convention between the United States and a foreign government.

Section 8. Officials to Contact for Obtaining Information

8.1 Requests by the Agency for Federal return information in magnetic tape mode should be made to the Commissioner of Internal Revenue, Attention ACTS:A. Requests for physical inspection or copying of Federal returns showing addresses within the State should be made to the Director, Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pa. 19155 or any other appropriate Service Center<sup>(address)</sup>; and requests for inspection and copying of audit abstracts and reports pertaining to such returns should be made to the District Director(s) at the Office of International Operations, who will be



responsible for making the proper arrangements for such inspection.

8.2 Requests by the head of the Agency for Federal returns of taxpayers or Federal return information relating to taxpayers showing addresses outside the State should be made to the appropriate District Director.

8.3 Requests by authorized officers and employees of the IRS for inspection or copying of State returns and State return information should be made to the Deputy Commissioner of Revenue and Taxation

(title of agency official)

P. O. Box 2796, Agana, Guam 96910

Section 9. Termination or Modification of Agreement

9.1 The provisions of this agreement are subject to the provisions of the Code and implementing regulations and published procedures and to the provisions of State statutes and regulations, and this agreement may be terminated or modified at the discretion of IRS or the Agency on account of changes in Federal or State statutes and regulations or whenever in the administration of Federal or State tax laws that action seems appropriate.

9.2 Any unauthorized use or disclosure of Federal returns or Federal return information furnished pursuant to this agreement, or inadequate procedures for safeguarding the confidentiality of such returns or return information, also constitutes grounds for termination of this agreement and the exchange of information thereunder, subject to the rights of administrative appeal as provided by regulations prescribed by section 6103(p)(7) of the Code.

9.3 Notwithstanding any other provision of this agreement, no Federal return or Federal return information shall be disclosed after December 31, 1978, by IRS to any person described in section 3 of this agreement if the requirements of section 6103(p)(8) of the Code are not met.

APPROVED:

Manuel A. Chaco  
(signature)

Director of Revenue & Taxation  
(title of agency official)

Signed at Agana, Guam  
this 30th day of June, 1977.

Samuel B. Berdallo  
Commissioner of Internal Revenue

Signed at Washington, D. C., this  
7th day of October, 1972.

APPROVED, on behalf of the

Territory of Guam  
(official name of the State)

and its officers and employees:

RICARDO J. BORDALLO  
Governor

JUL 25 1977

Signed at Agana, Guam  
this \_\_\_ day of June, 1977.

It is my opinion that under

applicable law of the Territory  
(official name)  
of Guam, the

Director of Revenue and Taxation Manuel A. Chaco  
(title of the agency official)  
Chico and Governor Berdallo

[OR]

are  
is duly empowered and authorized to  
bind to the terms and conditions  
of this agreement all officers  
and employees of the Territory  
(official name)  
of Guam, to whom  
Federal returns and Federal return  
information may be disclosed as  
provided herein.

Don Park  
Attorney General

Signed at Agana, Guam  
this 17 day of July, 1972.

GUIDELINES FOR IMPLEMENTATION OF THE  
AGREEMENT ON COORDINATION OF TAX ADMINISTRATION  
DEPARTMENT OF REVENUE AND TAXATION OF GUAM  
AND THE UNITED STATES - INTERNAL REVENUE SERVICE

I. General Purposes and Objectives

A. Under the authority of section 6103(d) of the Internal Revenue Code, as amended by the Tax Reform Act of 1976, the Department of Revenue and Taxation of Guam (hereafter referred to as Agency) and the Commissioner of Internal Revenue adopted the Agreement on Coordination of Tax Administration (hereafter referred to as Agreement). This Agreement has been in full force and effect since October 7, 1977.

B. In order to facilitate the implementation of the Agreement, the District Director, Foreign Operations District, Internal Revenue Service (hereafter referred to as District Director) and the Agency consider it mutually beneficial to state the procedures and understandings concerning the physical exchange of information. The term Possession, as used in this agreement, will mean the Territory of Guam.

C. Further, it is the intention of the parties to this Agreement that all exchanges under this Agreement will be reciprocal in nature to the extent that legal statutes permit.

D. Therefore, in association with the Agreement on Coordination of Tax Administration, the District Director and the Agency agree to establish and implement the following guidelines.

II. Information Specifically Requested by the District Director or the Agency

A. Requests by the District Director for copies of Possession tax returns or return information shall be submitted to the Director, Department of Revenue and Taxation, P.O. Box 2796, Agana, Guam 96910.

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B. Requests by the Agency for copies of Federal tax returns or return information will be submitted to the District Director, Foreign Operations District, Internal Revenue Service, 1325 K Street, N.W., Washington, D.C. 20225., Attn: Disclosure Officer.

C. Specific requests for tax returns and/or return information should include a description of the specific need and purpose for which it is to be used, and not merely a summary statement that the data is needed for tax administration purposes.

D. Returns and return information will be transmitted by first class mail to the liaison officials designated above or other authorized employees or hand delivered by an authorized employee of the parties to this agreement.

### III. General Provisions

A. It is the express intention of the parties to encourage an effective two-way flow of information that may affect the enforcement efforts of either party. From time to time, as the situation dictates, either party may initiate a briefing conference to further discuss new developments. The parties agree to meet at least annually for the purpose of reviewing the existing exchange program, examining the need for and use of data exchanged, exploring additional areas where exchange would be beneficial, and determining whether provisions of this agreement require revision or amendment.

B. The District Director and the Agency mutually agree to review their respective lists of employees authorized to request and receive Federal or Possession tax information, and to promptly inform the other party of any additions or deletions to such lists. By January 31 of each

year, subsequent to the execution of this agreement, each party will submit to the other a current list of those employees designated to sign requests for tax data.

C. These guidelines are not intended to alter, amend or rescind any provision of the Agreement on Coordination of Tax Administration now in effect between the Agency and the Commissioner of Internal Revenue. In case of conflict, the provisions of the Agreement on Coordination of Tax Administration will be effective, and any conflicting provisions of these guidelines will be considered null and void.

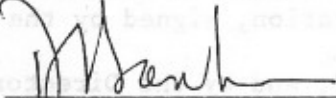
D. The authority for implementing these guidelines is the Agreement on Coordination of Tax Administration, and any action (or failure to take proper action) which would constitute grounds for termination of the Agreement on Coordination of Tax Administration would also be grounds to terminate these guidelines.

E. In the event that the need for any of the information in the foregoing provisions ceases, the receiving agency shall notify the other parties to discontinue submission of the affected information.

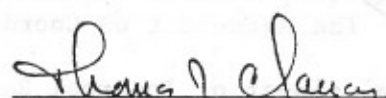
F. This agreement may be amended at any time with the mutual consent of the parties by written consent of the District Director, Foreign Operations District and Director, Department of Revenue and Taxation of Guam.

APPROVED:

TERRITORY OF GUAM

  
Dave J. Santos, Director  
Department of  
Revenue and Taxation  
Government of Guam

INTERNAL REVENUE SERVICE

  
Thomas J. Clancy, Director  
Foreign Operations District

Signed at Agaña Guam  
This 2nd day of Aug, 1983

Signed at WASHINGTON DC  
This 10th day of August, 1983





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ADDENDUM  
TO  
AGREEMENT ON COORDINATION OF TAX ADMINISTRATION

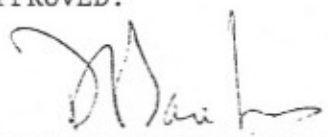
The Agreement on Coordination of Tax Administration, signed by the Commissioner of Internal Revenue on October 7, 1977, and by the Director of Revenue and Taxation of the Territory of Guam on June 30, 1977, and by the Governor of the Territory of Guam on July 25, 1977, is hereby modified by adding Section 10, which is to read as follows:

Section 10. Mutual Agreement Procedure

Where by reason of inconsistent positions taken by the IRS and the Agency, a taxpayer is or would be subject to inconsistent tax treatment by the two jurisdictions, the Director, Foreign Operations District (formerly the Office of International Operations) and the Director of Revenue and Taxation shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of the Internal Revenue Code. In particular, but not by way of limitation, the Director, Foreign Operations District and Director of Revenue and Taxation may consult together to endeavor to agree:

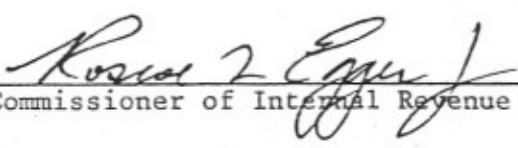
- (a) To the same allocation of income, deductions, credits, or allowances between related persons;
- (b) To the same determination of residency of a particular taxpayer, or
- (c) To the same determination of the source of particular items of income.

APPROVED:

  
\_\_\_\_\_  
Director of Revenue and Taxation

Signed at Agana, Guam

this 10th day of January, 1985.

  
\_\_\_\_\_  
Commissioner of Internal Revenue

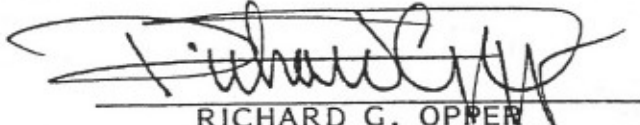
Signed at Washington, D.C.

this 12th day of July, 1985.

\* \* \* \*


APPROVED, on behalf of the  
Territory of Guam and its  
officers and employees:

Approved As To Form:

  
RICHARD G. OPPEN  
Attorney General

Date:

2/21/85

  
EDWARD D. REYES  
Acting Governor of Guam  
*agana, Guam*

Signed at

3/6/85

this \_\_\_\_ day of \_\_\_\_, 198\_\_.

